



BUSINESS LAW SECTION

NONPROFIT & UNINCORPORATED ORGANIZATIONS COMMITTEE

TO: The State Bar Office of Governmental Affairs

RE: A.B. 624 (Coto)

Committee Position:

☒ Oppose

Date position recommended:	April 27, 2007
Nonprofit & Unincorporated Organizations Committee vote:	Unanimous of Members Attending (a quorum being present)
Executive Committee vote:	—
Contacts:	Lisa A. Runquist Chair, Nonprofit & Unincorporated Organizations Committee Runquist & Associates 17554 Community Street Northridge, CA 91325 (818) 760-8986 lisa@runquist.com

I. STATEMENT OF POSITION

The Nonprofit & Unincorporated Organizations Committee (the “Committee”) of the Business Law Section of the State Bar of California welcomes this opportunity to provide comments on Assembly Bill No. 624 (“AB 624”). This is the first statement of position that the Committee has submitted on AB 624. This bill would not advance governance of foundations. It is intrusive at many levels, both internal and external to foundations. It would burden foundations out of proportion to any benefit that might result. Finally, the bill may adversely affect the charitable grant-making of foundations, as well as the ability of worthy nonprofits to receive such grants. Consideration should be given to examining the impact of this proposal on foundations and other more effective alternatives. The bill should be withdrawn.

A. Description of AB 624.

This bill would require a private foundation with assets over \$250,000,000 to collect specified ethnic and gender data pertaining to its governance and grant-making. This information includes: the racial and gender composition of its board of directors, the racial and gender composition of its staff, the percentage of contracts awarded to minority owned businesses, the number of grants and percentage of grant dollars awarded to organizations serving various ethnic communities, the number of grants and percentage of grant dollars awarded to organizations where 50% or more of the board are ethnic minorities, and the percentage of grant dollars awarded to organizations where 50% or more of the staff are ethnic minorities. A private foundation would have to post this information on its website and include this information in its annual report. This bill would add Corporations Code Section 5081 and Probate Code Section 16065.

B. The Committee’s Position.

The Committee opposes AB 624 for four reasons. First, although it seeks to ensure more transparency and accountability from foundations, this bill will not necessarily improve corporate governance of foundations and may actually make governance more difficult.

Second, the bill requires ethnic and gender data pertaining both to governance and to grant-making. This requirement is intrusive to the personal affairs of the board members and staff of foundations. The intrusiveness extends beyond the foundations to their grant recipients and to businesses that interact with foundations.

Third, this bill would be burdensome both to the foundations and to the grant-recipient nonprofits. It would impose multiple layers of administration and costs due to its requirements to secure, maintain, and report extensive data.

Finally, this bill may affect the ability of nonprofits to obtain grants from foundations. If implemented, foundations may seek to maintain ethnic and diversity ratios that would then deter them from making grants that would adversely affect such ratios, even if such grants would be in furtherance of their charitable mandate. Even if the nonprofit would meet the diversity requirements, proving this may well be beyond the ability of the nonprofit seeking the grant.

C. Analysis.

1. Governance of foundations with assets over \$250 million would be affected by this bill because they would be required to report both on their website and on their annual report the racial and ethnic composition of their boards of directors, including the percentage of board members that are African-American, Asian-American, Pacific Islander, Caucasian, Latino, Native American and Alaskan Native. It also requires disclosure of the racial and gender composition of foundation staff.

The accumulation and disclosure of ethnic and gender data would not improve foundation governance. Disclosure of the required details about boards of foundations would not necessarily cause a change in their composition. It may even make it more difficult for foundations to attract members to serve on their boards or to attract staff members.

2. The intrusiveness of this legislation should be considered closely. The intrusiveness extends not only to the nonprofit foundations, but the bill would also require foundations to obtain ethnic and gender data from every person or entity with whom the foundation interacts. At the foundation level, every board and staff member would be required to disclose personal ethnic and gender data. The foundations would also have to inquire of each of its business contracts whether such business is owned by African-Americans, Asian-Americans, Pacific Islanders, Caucasians, Latinos, Native Americans and Alaskan Natives. The foundations would also need to inquire of potential grant-recipients whether they are organizations serving African-Americans, Asian-Americans, Pacific Islanders, Caucasians, Latinos, Native Americans and Alaskan Natives. Additionally, foundations would need to inquire whether the potential grant-recipient organizations have boards where 50 percent or more of such board members are ethnic minorities. Finally, foundations would need to inquire of potential grant-recipient organizations whether their boards and their staff are 50 percent or more ethnic minorities. Many people prefer not to provide such information about themselves and properly consider it a matter of privacy protected by the U.S. [and California] Constitution[s]. The intrusiveness of this legislation is substantial and does not stop at the foundation level.

3. The inquiries required by this bill place enormous burdens and draining expenses on each foundation in the multiple layers of required recordkeeping (inquiries, responses, follow ups and the like) and administration. Foundations would need to secure and keep diversity data on their board members, staff, each business vendor, potential grant recipients and actual grant recipients. Foundations would need to maintain data on each grant recipient's board and staff composition. Foundations would be burdened by having to devote more of their funds and staff time to monitoring internal and external administration for diversity reporting, and thus diverting attention and money that could be better spent on their charitable missions.

4. Charitable recipients of foundations may be adversely affected by this bill. One inadvertent consequence of this bill may be that Foundations that are seeking to maintain specific ethnic and other ratios demonstrating diversity, may be deterred from making grants that would adversely affect such ratios even if such grants would be in furtherance of their charitable mandate. The administrative burden that would be imposed on the charitable recipients / potential recipients would be at least as much as that imposed on the foundation itself. This is

likely to deter worthy nonprofit organizations from even attempting to obtain such a foundation grant. And if the organizations do gather and monitor the required data, this again will divert a significant amount of attention and money on this level as well, that would otherwise be better used to carry out their charitable purposes.

II. GERMANENESS

The Committee believes that its members have the special knowledge, training, experience and technical expertise to provide helpful comments on the Bill and that the positions advocated herein are in the best interests of California nonprofit organizations and the constituents interests that they serve.

III. CAVEAT

This statement is that only of the Nonprofit & Unincorporated Organizations Committee of the Business Law Section of the State Bar of California. The positions expressed herein have not been adopted by the Business Law Section or its overall membership or by the State Bar's Board of Governors or its overall membership, and are not to be construed as representing the position of the State Bar of California. There are currently more than 8,800 members of the Business Law Section.

Membership in the Business Law Section is voluntary and funding for Section activities, including all legislative activities, is obtained entirely from voluntary sources.

Drafting Committee:

Louis E. Michelson
15233 Ventura Boulevard, PH-1
Sherman Oaks, CA 91403
(818) 784-1700
lemtax@earthlink.net

Lani Meanley Collins
Collins & Associates
213 West Canon Perdido Street
Santa Barbara, California 93101-3706
(805) 730-1333
lani.collins@collins-assoc.com

R. Bradbury Clark
O'Melveny & Myers LLP
400 South Hope Street, Rm. 1729
Los Angeles, CA 90071-2899
213-430-6123
bclark@omm.com

Lisa A. Runquist
Runquist & Associates
17554 Community Street
Northridge, CA 91325
(818) 760-8986
lisa@runquist.com

Cherie L. Evans
Evans & Rosen
425 Pacific Avenue
San Francisco, CA 94133
(415) 264-1800
cherie@evansrosen.com

cc: Neil J Wertlieb
Keith P. Bishop